

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
FAIRFIELD SENTRY LIMITED, et al.,)	Chapter 15 Case
Debtors in Foreign Proceedings.)	Case No. 10-13164 (SMB)
)	Jointly Administered
FAIRFIELD SENTRY LIMITED (IN LIQUIDATION), et al.,)	
Plaintiffs,)	Adv. Pro. No. 10-03496 (SMB)
-against-)	Administratively Consolidated
THEODOOR GGC AMSTERDAM, et al.,)	
Defendants.)	
FAIRFIELD SENTRY LIMITED (IN LIQUIDATION), et al.,)	
Plaintiffs,)	Adv. Pro. No. 10-03635 (SMB)
-against-)	
ABN AMRO SCHWEIZ AG, et al.,)	
Defendants.)	
FAIRFIELD SENTRY LIMITED (IN LIQUIDATION), et al.,)	
Plaintiffs,)	Adv. Pro. No. 10-03636 (SMB)
-against-)	
ABN AMRO SCHWEIZ AG, et al.,)	
Defendants.)	

**ATTORNEY DECLARATION OF STEPHEN M. HARNIK
IN SUPPORT OF DEFENDANTS' RENEWED MOTION TO DISMISS**

I, Stephen M. Harnik, declare under penalty of perjury as follows:

1. I am a member of the bar of the State of New York, duly admitted to practice before all the courts of the State of New York, and the principal of Harnik Law Firm, attorneys for

defendant Vorarlberger Landes- und Hypothekenbank Aktiengesellschaft, now known as Hypo Vorarlberg Bank AG (hereinafter “Hypo Vorarlberg”), co-defendant in the above-captioned adversary proceedings.

2. Hypo Vorarlberg joins the *Consolidated Memorandum of Law in Support of Defendants’ Renewed Motion to Dismiss Pursuant to 11 U.S.C. §§ 561(d) and 546(e) and Insufficient Service of Process on Defendants in Foreign Hague Service Convention Signatory States* (the “Consolidated Memorandum”), filed on March 16, 2020 [Dkt. No. 2903 in Adv. Pro. No. 10-03496].¹ As set forth in Part I of the Consolidated Memorandum, the Liquidators’ claims are barred in their entirety by Section 546(e) of the Bankruptcy Code, as incorporated into these Chapter 15 proceedings by Section 561(d) of the Code.

3. I respectfully submit this declaration in further support of the Consolidated Memorandum and for the limited purpose of identifying and explaining certain publicly-available documents filed contemporaneously herewith, of which the Court may take judicial notice, evidencing that Hypo Vorarlberg was a “commercial or savings bank” and therefore a “financial institution” within the meaning of 11 U.S.C. § 101(22) during the relevant period, and therefore that Section 546(e) applies to Hypo Vorarlberg as set forth in Section I.D of the Consolidated Memorandum.

4. Attached hereto as Exhibit A-1 is a true and correct copy of an Order by the Regional Court (“*Landesgericht*”) Feldkirch, entered on September 30, 2017, certified and verified with Apostille. Attached hereto as Exhibit A-2 is a true and correct copy of a certified English translation of Exhibit A-1, indicating that Hypo Vorarlberg’s application for entry, in the Austrian Commercial Register (“*Firmenbuch*”) at File No. FN 145586y, of an amendment to its bylaws

¹ Capitalized terms not defined have the same meanings as in the Consolidated Memorandum.

changing its business name from “Vorarlberger Landes- und Hypothekenbank Aktiengesellschaft” to “Hypo Vorarlberg Bank AG” was granted.

5. Attached hereto as Exhibit B-1 is a true and correct copy of an Excerpt from the Austrian *Firmenbuch*, File No. FN 145586y, as of February 12, 2020, certified and verified with Apostille. Attached hereto as Exhibit B-2 is a true and correct copy of a certified translation of Exhibit B-1, indicating that Hypo Vorarlberg is registered as a corporation (or “*Aktiengesellschaft*” - AG) and specifying its line of business as “Bank.” The *Firmenbuch* is the Austrian commercial register, maintained by the Austrian courts. Commercial register excerpts such as the one in Exhibit B are publicly available for a fee.

6. Attached hereto as Exhibit C is a true and correct copy of a letter by the Austrian Financial Market Authority (“FMA”), dated February 19, 2020, confirming that Hypo Vorarlberg “...has a license to conduct banking business and performed such services in the years 2005 ... until now” and “...is currently performing banking business...” subject to the FMA’s permanent supervision and in accordance with the Austrian Banking Act.

7. Attached hereto as Exhibit D-1 is a true and correct copy of Hypo Vorarlberg’s FMA-issued banking license for Hypo Vorarlberg, which can be accessed online via FMA’s database of licensed credit institutions at <https://www.fma.gv.at/en/banks/> (last visited on March 12, 2020; click “Licensed credit institutions in Austria” followed by “Hypo Vorarlberg Bank AG”). Attached hereto as Exhibit D-2 is a true and correct copy of a certified translation of Exhibit D-1, indicating that Hypo Vorarlberg’s banking license includes, among other things, deposit business, checking account business, foreign exchange and currency business and securities business.

8. As the aforementioned documents - of which the Court may take judicial notice - demonstrate, Hypo Vorarlberg was authorized to act as a “commercial or savings bank” under the supervision of the Austrian Financial Market Authority during the relevant period.

9. Hypo Vorarlberg expressly reserves all arguments not raised in the Consolidated Memorandum, including without limitation that the Bankruptcy Court lacks personal jurisdiction over Hypo Vorarlberg.

Dated: March 20, 2020
New York, New York

Respectfully submitted,

HARNIK LAW FIRM

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